

**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Paper No. 27  
JQ

12/13/00

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

—————  
Trademark Trial and Appeal Board  
—————

The Regents of the University of California  
v.  
Perry L. Haney

—————  
Opposition No. 101,311  
to application Serial No. 74/640,157  
filed on February 24, 1995  
—————

J. Suzanne Siebert of Majestic, Parsons, Siebert & Hsue for  
The Regents of the University of California.

Scott W. Stauffer for Perry L. Haney.

—————  
Before Quinn, Hohein and Rogers, Administrative Trademark  
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Perry L. Haney to  
register the mark ORTHOMED SPINE & JOINT CONDITIONING  
CENTERS for "health care [services]." <sup>1</sup>

Registration has been opposed by The Regents of the  
University of California under Section 2(d) of the Trademark

—————  
<sup>1</sup> Application Serial No. 74/640,157, filed February 24, 1995,  
alleging first use anywhere on October 12, 1994, and first use in  
commerce on February 1, 1995. The words "Spine & Joint  
Conditioning Centers" are disclaimed apart from the mark.

**Opposition No. 101,311**

Act on the ground that applicant's mark, when applied to applicant's services, so resembles opposer's previously used marks ORTHOMED, UCSD ORTHOMED and ORTHOMED SPINE & JOINT CONDITIONING CENTER for health care services and health educational services as to be likely to cause confusion.

Applicant, in its answer, denied the salient allegations of the opposition.

The record consists of the pleadings; the file of the involved application; trial testimony, with related exhibits, taken by opposer; and a discovery deposition of applicant, with related exhibits, introduced by opposer in its notice of reliance. Applicant did not take any testimony or offer any other evidence. Only opposer filed a final brief on the case.<sup>2</sup>

Opposer is the governing body of the University of California which has several campuses, including one in San Diego. At the University of California, San Diego (UCSD), there is a school of medicine consisting of several departments, one of which is orthopaedics. Under the pleaded marks, the department has been engaged since May

---

<sup>2</sup> It has come to the Board's attention that the parties were involved in Cancellation No. 30,626. In that proceeding, opposer sought cancellation of applicant's Reg. No. 1,967,042, issued April 9, 1996, of the mark ORTHOMED SPINE & JOINT MEDICAL CENTERS and design for health care services. The petition for cancellation was brought on the grounds of priority and likelihood of confusion. The Board, on December 12, 2000, entered default judgment against applicant in view of his failure to file an answer. The registration will be canceled in due course.

1992 in an outpatient clinical practice, which includes a variety of services ranging from surgery to physical therapy rehabilitation to educational programs.<sup>3</sup>

Information about applicant is revealed in his discovery deposition. Applicant is a medical doctor who operates, under the applied-for mark, clinics specializing in the evaluation and treatment of injuries and disorders of the spine and other joints. Dr. Haney testified that he attended a training program held by opposer at opposer's facility before opening his facility in Colorado.

The record establishes opposer's priority of use. As opposer correctly points out, in the absence of any testimony or evidence, the earliest date of use upon which applicant may rely is the filing date of the involved application. *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991). In the present case, however, the discovery deposition of Dr. Haney includes testimony relating to his first use of the involved mark. This discovery deposition reveals a date of first use slightly earlier than the application filing date. Nevertheless, even this date is later than opposer's established date of first use. In sum, opposer has shown continuous use of its pleaded marks in connection with its health care and related services since May 1992, that is,

---

<sup>3</sup> The record shows that the mark ORTHOMED, as actually used,

from a date prior to either applicant's first use or the filing date of his application.

We now turn to the issue of likelihood of confusion. Our determination under Section 2(d) of the Act is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities or dissimilarities between the marks and the similarities or dissimilarities between the services. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

First, with respect to the marks, applicant's mark ORTHOMED SPINE & JOINT CONDITIONING CENTERS is essentially identical to opposer's mark ORTHOMED SPINE & JOINT CONDITIONING CENTER, differing only in the singular/plural versions of the final word in the marks. Further, applicant's mark is dominated by the term ORTHOMED, which is identical to opposer's mark ORTHOMED, and which is substantially similar to opposer's mark UCSD ORTHOMED. Simply put, in terms of sound, appearance and meaning, the parties' marks are either identical or substantially similar. In comparing the marks, we also note that the

---

appears as "OrthoMed."

**Opposition No. 101,311**

record is devoid of evidence of any third-party uses or registrations of similar marks in the medical field.

Insofar as the parties' services are concerned, they likewise are identical or virtually identical. The record clearly establishes that the parties both render health care services and health educational services in the area of orthopaedics. These services are rendered in the same channels of trade to the same classes of consumers.

As a final point, in reaching our decision, we are mindful of the fact that Dr. Haney, less than one year prior to opening his facility under the involved mark, attended a training course at opposer's ORTHOMED facility in San Diego. Thus, applicant had knowledge of opposer's mark prior to his adoption of an essentially identical mark.

Decision: The opposition is sustained and registration to applicant is refused.